

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

KIM JOE GRAVES, ID # 33646-177, §
§
Petitioner/Defendant, §
v. § Civil Action No. 3:07-CV-1396-L
§ No. 3:05-CR-0082-L
UNITED STATES OF AMERICA, §
§
Respondent/Plaintiff. §

ORDER

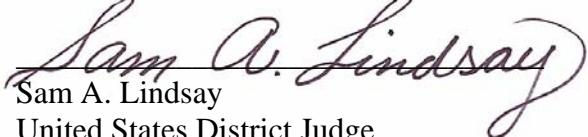
Before the court are: (1) Motion Under 28 USC § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, filed August 13, 2007, and (2) Motion for Leave to Conduct Discovery Materials Pursuant to 28 USC § 2255 Rules, Rule (6)(b), filed August 9, 2007. The court referred the motion to vacate to United States Magistrate Judge Irma Ramirez, and she entered her findings, conclusions and recommendations on August 24, 2007. After considering the magistrate judge's findings and recommendations, the motions, response, reply, record, and applicable law, the court **denies without prejudice** the Motion Under 28 USC § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, and **denies as moot** the Motion for Leave to Conduct Discovery Materials Pursuant to 28 USC § 2255 Rules, Rule (6)(b).

Movant Kim Joe Graves ("Graves" or "movant") pleaded guilty to conspiracy to possess a controlled substance with intent to distribute on October 31, 2005. Movant was sentenced to 216 months imprisonment on February 15, 2006. The same day, movant filed a notice of appeal. Graves's motion indicates that his attorney filed an *Anders* brief in August 2006, but the docket sheet for this case indicates that the appeal is pending.

The magistrate judge found that review of this motion pursuant to section 2255 is inappropriate given the pending appeal of movant's criminal case. Movant objects to the findings and recommendation, contends that he is not aware that the *Anders* brief is still pending, and asks the court to hold the motion in abeyance. Movant argues that judicial economy favors abeyance rather than dismissal of the motion. The court **overrules** movant's objections. The court finds that it is inappropriate to rule on the motion while Grave's appeal is pending, given that the appeal may moot Grave's contentions in the motion. The court has reviewed the docket sheet from the appeal and confirmed that movant's appeal is pending. While Graves may need to re-file the motion once the appeal has been resolved, the court finds that this is a slight burden that does not rise to the level of an injustice and is justified given that the appeal may moot his contentions. The court has weighed the potential burden to movant against its interest in the administration of its docket and the timely resolution of pending motions.

The court has reviewed the magistrate judge's findings and recommendations, the record, and the applicable law, and determines that the findings are correct and are therefore **accepted** as those of the court. The court **denies without prejudice** the Motion Under 28 USC § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. Because movant's appeal is pending, the court also **denies as moot** the Motion for Leave to Conduct Discovery Materials Pursuant to 28 USC § 2255 Rules, Rule (6)(b).

It is so ordered this 27th day of September, 2007.


Sam A. Lindsay
United States District Judge